

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNY SOE**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-15431-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871 – 24.23(10) – Leave of Absence  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On June 30, 2021, claimant Jenny Soe filed an appeal from the July 29, 2020 (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant was working to the extent that she was removed from the labor market. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Monday, August 30, 2021. Appeal numbers 21A-UI-15431-LJ-T, 21A-UI-15432-LJ-T, and 21A-UI-15433-LJ-T were heard together and created one record. The claimant, Jenny Soe, participated with the assistance of a Burmese/English interpreter (ID number 13736) from CTS Language Link. The employer, Hy-Vee, Inc., participated through witnesses Chance Duin, Assistant HR Manager of Hy-Vee Fresh Commissary; and Brandy Kading, Human Resources Manager; and was represented by hearing representative Erin Bewley. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did the claimant file a timely appeal?  
Is the claimant able to and available for work?  
Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed part time, most recently as a production worker, from February 27, 2019, until April 11, 2021, when she separated from employment. That separation was not discussed during the hearing.

Claimant opened a claim for unemployment insurance benefits with an effective date of April 26, 2020. At the time, she was experiencing symptoms of COVID-19. Claimant saw her medical provider and was advised to quarantine until she was no longer symptomatic. She provided the employer a letter from Dr. Kevin Cunningham dated April 29, 2020. In this letter, Dr.

Cunningham states that claimant had symptoms of COVID-19 and has been recovering in isolation. Claimant took a formal FMLA-covered leave of absence from April 24 through April 30. She then remained out of work through May 21. Claimant returned to her employment on May 22, 2020.

The administrative record reflects that claimant has been approved for Pandemic Unemployment Assistance benefits for the period of April 26, 2020, through May 23, 2020. Those benefits have not yet been issued to the claimant.

A disqualification decision was mailed to claimant's last known address of record on July 29, 2020. She did receive the decision at some point, but she does not recall when. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 8, 2020. The appeal was not filed until June 30, 2021, which is after the date noticed on the disqualification decision. Claimant stated that she called and filed an appeal via telephone when she received the decision.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the

division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant's testimony that she immediately filed an appeal via telephone is not credible. The Appeals Bureau does not accept appeals via telephone, so claimant would not have been able to successfully file an appeal over the phone. Additionally, the Appeals Bureau has no record of claimant filing an appeal prior to June 30, 2021. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

Even if claimant's appeal were deemed timely, she would not be eligible for benefits. Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10) provides:

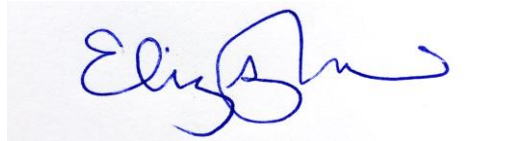
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Here, claimant was on a voluntary leave of absence from April 26, 2020, through May 23, 2020, due to personal illness. Specifically, claimant was experiencing symptoms of COVID-19 and was not able to work. She requested and was granted an extended absence in order to quarantine and remain away from work. Claimant then returned once she was healthy. Claimant has not established that she was able to and available for work. Benefits must be withheld.

**DECISION:**

The July 29, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal in this matter. The decision of the representative remains in effect.



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Elizabeth A. Johnson  
Administrative Law Judge  
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September 3, 2021  
Decision Dated and Mailed

lj/mh